

STATE OF VERMONT
PUBLIC SERVICE BOARD

Petition of Vermont Gas Systems, Inc., for a)
certificate of public good, pursuant to 30 V.S.A.)
§ 248 , authorizing the construction of the)
“Addison Natural Gas Project” consisting of)
approximately 43 miles of new natural gas) Docket No. 7970 (on remand)
transmission pipeline in Chittenden and)
Addison Counties, approximately 5 miles of)
new distribution mainlines in Addison County,)
together with three new gate stations in
Williston, New Haven and Middlebury,
Vermont

**MOTION TO RECONSIDER THE BOARD’S SEPTEMBER 25, 2014 RULING OR TO
STRIKE PARTS OF THE PREFILED TESTIMONY AND EXHIBITS OF WITNESSES
SIMOLLARDES AND GILBERT**

The Board, by order issued during the afternoon of September 25, 2014, has held that its interpretation of the remand order in this case limits the Board to consideration only of the increased costs of the project. The remand “is not a general invitation to reopen the record in light of other facts that may have changed subsequent to the issuance of the final order in this proceeding.” Order page 5.

The Board has taken the same view as that of the Department. As Mr. Poor wrote in his September 22, 2014, prefiled testimony, at page 5, line 8, “no other variable” is being reconsidered.

Ms. Lyons disagrees with that view. The request was for a remand to reconsider the § 248 Certificate of Public Good “in light of” the new costs and to “address” this new information. Nothing in the request or in the Supreme Court order suggested that “in light of” means “and consisting solely of” or that the Board was intending to address this new information in a vacuum. It is not logically possible to consider whether the project satisfies § 248 by

considering project cost in a vacuum. A project cannot be evaluated as the *least-cost alternative* unless one compares the project to its alternatives. The Board's evidence about those alternatives is now 12 months out of date. While the cost of constructing gas pipelines has increased by 40% in the year since the evidence closed, the landscape of alternatives to home heating with natural gas has changed dramatically. It is now clear that heat pumps reliably produce cost savings for residences and reductions in greenhouse gasses that are comparable to or greater than those of natural gas -- and that heat pumps do so without the social, environmental and financial costs of constructing a pipeline. Other dockets of this Board have opened to address this change. Mr. Neme's testimony in this docket describes the current state of knowledge about the costs and benefits of heat pumps. Ms. Lyons therefore asks that the Board reconsider the reasoning of its September 25, 2014, order¹. If the Board believes that the scope of the remand is not broad enough to consider these facts, which are necessary to ascertain the public good, Ms. Lyons again urges the Board to ask the Supreme Court for clarification or broadening of the scope of the remand, as she did on January 22, 2014, in counsel's cover letter.

Nonetheless, if the Board decides to restrict the evidence in these proceedings to only changes in cost, then most of Ms. Simollardes testimony and all of her exhibits must be stricken, for they are explicitly based on updated information about variables other than the cost of the project, contrary to the Board's ruling and Mr. Poor's approach. Ms. Simollardes testifies on page 4 that the exhibits are based on new information other than the increased cost of the project:

The methodology for the Updated Board Exhibit-1 is unchanged; only the inputs have been updated. In addition to reflecting the updated cost inputs, other updated inputs include natural gas, fuel oil, and propane rates; fuel oil and

¹ The Board's Order denying intervention to VPIRG was based in large part on its position that only new evidence as to cost would be admitted, and that VPIRG wished to submit evidence pertaining to other issues. Board Order at pp.4-5. If the Board reconsiders its view of the scope of these proceedings, VPIRG asks that the Board also exercise its discretion and allow it to intervene in these proceedings.

propane rates were updated to reflect August, 2014 values. Similarly, prices were escalated using the 2014 EIA forecast (vs. the 2012 forecast used in Original Board Exhibit-1.) Carrying costs were updated to reflect the current cost of equity of 10.26% vs. 9.75% used in Original Board Exhibit-1. In Attachment Supp.PSB:VGS:1-2, the revenues from the IP Facilities Development Agreement (“FDA”) associated with the Addison Upgrade were updated to reflect the current budget. No changes were made to number of customers, load or assumed penetration rates.

She also testifies on page 9 that Mr. Bluestein has “reevaluated” the benefits of greenhouse gas reductions from the conversion from fuel oil to natural gas. Her Appendix EMS-3 and her testimony on page 10 set forth Mr. Bluestein’s new numbers. Mr. Bluestein’s reevaluation is explicitly based on International Paper Company’s testimony in Docket 8180, in 2014. See footnote ** of that Exhibit.

Each of Ms. Simollardes’ new Exhibits is based on updated information other than costs. As explained in her Answer 6 on page 4, the inputs as to natural gas, fuel oil and propane rates and prices were changed, as were carrying costs and revenues. Although Answer 7, on page 5, states that Exhibit 1-2 is unchanged, the exhibit itself states that it was developed using an updated EIA forecast for 2014, an update using August 2014 VGS rates, an update using August 2014 fuel oil and propane prices, a changed price for interruptible gas supply from May of 2014, an update using firm revenue requirements for August of 2014, the current cost of equity, and updated IP revenues.

If the Board is not going to reconsider its September 25, 2014 decision, Ms. Lyons asks that the Board strike all of Ms. Simollardes exhibits and the following parts of her prefiled testimony: Answers 5, 6, 7, 8, 9, 10 and 11, and the Conclusion, as all are based on her new exhibits, which consist of analyses based on “facts that may have changed subsequent to the issuance of the final order in this proceeding.”

In the alternative to striking virtually all of Ms. Simollardes testimony (and all of her

exhibits), and in the interests of actually determining what is in the public good, Ms. Lyons respectfully asks that the Board reconsider its ruling and explicitly rely on both Ms. Simollardes' testimony *and* Mr. Neme's testimony.

Similarly, Mr. Gilbert relies on new information other than the cost of the project in his Answer 7, page 6, fourth bullet point ("Natural gas is still significantly less expensive than other fuels – based on the Vermont Department of Public Service's August 2014 fuels-cost comparison, the price for natural gas is 40% less than fuel oil, 50% less than propane and 12% to 56% less than electricity depending on the technology employed.") and fifth bullet point (referring to "recent" successful expansion of natural gas in Chittenden County), and in his Answer 8 (purporting to explain that the Project "still" saves in fuel bills and in reducing carbon). Unless the Board reverses its decision, these Answers also should be stricken as they too consist of "facts that may have changed subsequent to the issuance of the final order in this proceeding."

Ms. Lyons' motions to reconsider and to strike are based on fundamental fairness and constitutional due process, and the Vermont Administrative Procedure Act. Under § 809(c) of the Act, Ms. Lyons has a right to respond and present evidence on all issues involved. The Board should not allow the Petitioner to rely on updated information about the alternatives to the Project and the relative advantages of the Project over all the alternatives, including use of electricity for heating and the evidence from Docket 8180, while barring intervenors from responding by submitting updated information about alternatives to the project, including use of electricity for heating and the evidence from Docket 8180.

Vermont Rule of Civil Procedure 59(e) governs motions to alter a final judgment. The Board's September 25, 2014, Order is not a final judgment, but the standards of the rule may be

useful in this context. The rule authorizes a tribunal to exercise its discretion “as warranted in the interests of justice.” V.R.C.P. 59, Reporter’s Notes. The Board is asked to exercise its discretion in this instance to fully and fairly address whether or not to reopen these proceedings in light of the new cost information.

Conclusion

The Board is asked to reconsider its September 25, 2014 ruling and allow updated information about alternatives to the Project, from both the Petitioner and from intervenors. If the Board does not reconsider and reverse its decision as to the scope of the proceeding, the Petitioners’ exhibits and testimony referred to above should be stricken.

Dated at Bristol, Vermont, this 25th day of September, 2014.

Kristin Lyons

BY:

James A. Dumont

James A. Dumont, Esq.

PO Box 229

15 Main St.

Bristol, VT 05443

453-7011

Dumont@gmavt.net